

CCRB INVESTIGATIVE RECOMMENDATION

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|--|-------------------------------------|---------------------------|---|---|---------------------------------|
| Investigator: Phil Weitzman | Team: Team # 5 | CCRB Case #: 200511684 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Friday, 09/23/2005 8:52 PM | Location of Incident: § 87(2)(b) | Precinct: 101 | 18 Mo. SOL 3/23/2007 | EO SOL 3/23/2007 | |
| Date/Time CV Reported Thu, 09/29/2005 3:26 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 09/29/2005 3:26 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| | |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. SGT Carlos Fabara | 01279 | 922317 | 101 PCT |
| 2. POM John Florio | 29396 | 930165 | 101 PCT |
| 3. POM Eric Konoski | 26428 | 930497 | 101 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|---|-----------------------------|
| A.SGT Carlos Fabara | Abuse: Sergeant Carlos Fabara supervised the forcible stop and questioning of § 87(2)(b) and § 87(2)(b) | |
| B.SGT Carlos Fabara | Abuse: Sergeant Carlos Fabara frisked § 87(2)(b) | |
| C.POM Eric Konoski | Abuse: Officer Eric Konoski frisked § 87(2)(b) | |
| D.SGT Carlos Fabara | Abuse: Sergeant Carlos Fabara threatened to arrest § 87(2)(b) | |
| E.SGT Carlos Fabara | Discourtesy: Sergeant Carlos Fabara gestured obscenely toward § 87(2)(b) and § 87(2)(b) | |
| F.POM Eric Konoski | Discourtesy: Officer Eric Konoski gestured obscenely toward § 87(2)(b) and § 87(2)(b) | |
| G.POM John Florio | Discourtesy: Officer John Florio gestured obscenely toward § 87(2)(b) and § 87(2)(b) | |
| H.SGT Carlos Fabara | Abuse: Sergeant Carlos Fabara refused to provide his name to § 87(2)(b) | |

Synopsis

§ 87(2)(b) called-in a complaint to the CCRB on 9/29/2005 (enc. 6A-C). § 87(2)(b)'s complaint arose from the following events: on Friday 9/23/2005 at approximately 8:52 PM, § 87(2)(b) § 87(2)(b)-year-old son § 87(2)(b) and § 87(2)(b)-year-old son § 87(2)(b) were hanging out in front of § 87(2)(b) in Queens, where the brothers were staying with their family, when they were stopped by the 101st Precinct Anti-Crime team, consisting of **Sergeant Carlos Fabara**, **Officer Eric Konoski** and **Officer John Florio** (allegation A). Sergeant Fabara frisked § 87(2)(b) (allegation B), while Officer Konoski frisked § 87(2)(b) (allegation C). During the encounter, § 87(2)(b) argued with the officers, allegedly prompting an unidentified officer to threaten him with arrest (allegation D). The officers released the brothers, and, according to § 87(2)(b) made rude finger gestures at the boys as they drove away (allegations E, F and G.) § 87(2)(b) also claimed that an officer identified by investigation as Officer Konoski licked his tongue at § 87(2)(b) as they drove away; this allegation was referred to IAB under log # 05-35535.

§ 87(2)(b) her husband § 87(2)(b) and their friend § 87(2)(b) learned of the stop from § 87(2)(b) and came outside with him hoping to speak with the officers. As the group stood in front of § 87(2)(b) they observed Sergeant Fabara, Officer Konoski and Officer Florio driving back towards the building. § 87(2)(b) and § 87(2)(b) spoke with the officers, and § 87(2)(b) § 87(2)(b) alleged that, when she asked Sergeant Fabara for his name, he refused to provide it (allegation H).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) provided a phone statement to the CCRB on 10/5/2005 (enc. 7A-F). § 87(2)(b) is a 5' 9 1/2", 160 pound § 87(2)(b)-year-old black female. After roughly five minutes, § 87(2)(b) mentioned that her husband § 87(2)(b) was sleeping in the bedroom that she was talking in. At this point, the investigator informed § 87(2)(b) that she should be in a separate room, and she moved.

On 9/23/2005, § 87(2)(b) her husband § 87(2)(b) and her children § 87(2)(b)-year-old § 87(2)(b) § 87(2)(b)-year-old § 87(2)(b) and § 87(2)(b)-old § 87(2)(b) were visiting § 87(2)(b)'s father at his apartment at § 87(2)(b) in Queens (part of the Redfern Houses development), because he had a heart attack and was in the hospital. The family used to live in the Redfern Houses, but had moved to Virginia three years ago. They knew many of the people in the neighborhood.

Prior to the incident, § 87(2)(b) recalled seeing her sons § 87(2)(b) and § 87(2)(b) and their friends, including § 87(2)(b) sitting on the park benches as she entered § 87(2)(b) § 87(2)(b) was wearing a red t-shirt, blue-jean shorts and blue sneakers. § 87(2)(b) was wearing blue striped shirt, blue jeans. § 87(2)(b) was wearing a red t-shirt, blue jeans and white sneakers. § 87(2)(b) was wearing a red and white jersey that said, "Montana" on the back in white letters, blue jean pants and white sneakers.

After about twenty minutes, during which time § 87(2)(b) began preparing dinner with her friend § 87(2)(b) § 87(2)(b) came upstairs and told that something was "wrong" with § 87(2)(b) § 87(2)(b) told § 87(2)(b) to tell § 87(2)(b) to come upstairs, and as soon as she stood up to walk to the door, § 87(2)(b) came into the apartment and said, "Mommy, a cop just pulled on § 87(2)(b)

As § 87(2)(b) and § 87(2)(b) walked down the building stairs, they ran into § 87(2)(b) who was crying and said, "This cop pulled on me mommy for no reason." § 87(2)(b) and her husband § 87(2)(b) then ran downstairs with § 87(2)(b) behind them, and went outside to look for the officer. Another girl who lived in the building, whom § 87(2)(b) knew only as § 87(2)(b) was there.

The group stood outside for a while, during which time § 87(2)(b) used her phone to call 911 and asked whether they could summon the car that had been in the area of the building. She explained to

the operator what had happened, and, at approximately 9:00 PM, the operator connected her to Internal Affairs.

As § 87(2)(b) spoke with Internal Affairs, a black unmarked car drove slowly up the pathway with no lights on towards § 87(2)(b)'s group. Once the car had driven halfway to § 87(2)(b)'s group, § 87(2)(b) told her that the car belonged to the officers who had stopped him before.

As the officers drove on the project walkway, a young man, whom the family did not know, leaned against the fence about ten to twenty feet away in order to get out of the way. The man was a black male, 6'0" tall, sixteen or seventeen years old, overweight, with low cut hair, blue jeans and a grey-and-black sweatjacket.

An officer identified by investigation as Sergeant Carlos Fabara got out of the front passenger's seat, and an officer identified by investigation as Officer Eric Konoski got out of the back passenger's seat. An officer identified by investigation as Officer John Florio got out of the driver's seat and walked around the car.

§ 87(2)(b) described Sergeant Fabara as being either Hispanic or Asian, 6'0", with dark hair and brown eyes, in his late 30s, weighing 170 to 190lbs with a muscular build. She described Officer Konoski as a white male, short (5'5" to 5'8"), 190lbs to 200lbs with a muscular build, in his early forties with a dark mustache and beard that were not connected. She could not describe Officer Florio except to say that he was a white male. She could not recall what the officers were wearing.

The unidentified young man raised his hands in the air, and all three officers turned him around and reached inside both the front and back pants pockets without removing anything. They also reached into his sweatjacket and patted his legs down. § 87(2)(b) recognized the young man from the area, but only knew that he did not live in § 87(2)(b).

After five minutes, the officers released the man and began driving again. § 87(2)(b) and § 87(2)(b) walked up to the front passenger's seat of the car. The officers got out of their car, and, as they did so, put their badges, which were hanging on lanyards, inside their shirts.

§ 87(2)(b) asked to speak with Sergeant Fabara. At Sergeant Fabara's request, § 87(2)(b) told the children to stand further away, and the two then began talking at the hood of Sergeant Fabara's car. § 87(2)(b) told § 87(2)(b) to stand back as well, because she was on the phone with Internal Affairs, and she did not hear the rest of the conversation between her husband and Sergeant Fabara. Officer Florio and Officer Konoski remained standing by the car.

After some time, § 87(2)(b) walked over to § 87(2)(b) and they walked back to the car together. § 87(2)(b) introduced § 87(2)(b) as § 87(2)(b)'s mother. They began speaking while § 87(2)(b) remained on the phone with Internal Affairs. The Internal Affairs officer kept telling § 87(2)(b) to give her phone to Sergeant Fabara. § 87(2)(b) told Sergeant Fabara that she was talking with Internal Affairs and asked if he wanted to speak with them, and he replied, "No, I don't wanna speak to anybody." At some point, the Internal Affairs officer asked § 87(2)(b) to ask Sergeant Fabara if he was the sergeant in the car, and he replied, "Yes, I am the sergeant." The Internal Affairs officer told § 87(2)(b) to ask Sergeant Fabara for his name. § 87(2)(b) asked, and Sergeant Fabara replied, "No, I'm not giving it. Who are you on the phone with?" § 87(2)(b) explained that she was speaking with Internal Affairs. At the Internal Affairs officer's request, § 87(2)(b) asked Sergeant Fabara to call the Internal Affairs officer, and he replied, "Give me his name and I'll call him, but you're not getting my name." The conversation ended with the Internal Affairs officer telling § 87(2)(b) to tell Sergeant Fabara to call Internal Affairs.

Sergeant Fabara explained that there were a lot of gangs in the area, and that he thought her son was a member of the Bloods, based upon his red shirt.

After the conversation, Sergeant Fabara apologized and said that he was wrong, and that he would be in touch with them. Sergeant Fabara then asked § 87(2)(b) for her ID. § 87(2)(b) had left her driver's license in her car; she gave her car keys to her son § 87(2)(b) and had him bring her her pocketbook from the car. § 87(2)(b) then provided her driver's license to Sergeant Fabara, who wrote down her name and contact information. § 87(2)(b) asked why he was doing that, and he said, "I have to have your information." When asked whether she felt that Sergeant Fabara had ordered her to provide her ID, or was "just asking", § 87(2)(b) stated that she felt that he was "just asking," and stated that she did not mind that he asked for it, although she wondered why he needed her ID.

Results of Investigation

§ 87(2)(b) provided a phone statement to the CCRB on 10/5/2005 (enc. 9A-E). § 87(2)(b) is a 6'0", 180 pound § 87(2)(b)-year-old black male. On 9/23/2005 at approximately 8:30 PM, he was hanging outside § 87(2)(b) with his brother § 87(2)(b) and friends known only to him as § 87(2)(b) and § 87(2)(b) along with others whose names he did not know.

§ 87(2)(b) stated that he was wearing a red and white jersey, blue jeans and white sneakers. § 87(2)(b) was wearing a plain red shirt, blue shorts and blue sneakers. § 87(2)(b) was wearing a white shirt, and a white do-rag with black jeans and black shoes. § 87(2)(b) could not remember what § 87(2)(b) wore. One other boy who was there was wearing red, but § 87(2)(b) did not know his name.

A black unmarked car pulled up and sat in front of the building for a few seconds. Then, three officers, identified by investigation as Sergeant Carlos Fabara, Officer Eric Konoski and Officer John Florio, got out with their badges around their necks and ran towards § 87(2)(b)'s group.

Although § 87(2)(b) consistently described the respective roles of three unique officers in the incident, his physical descriptions provided an insufficient basis to ascribe actions to Sergeant Fabara, Officer Konoski and Officer Florio. However, subsequent investigation allowed the investigation to identify one of the officers as Sergeant Fabara. § 87(2)(b) described Sergeant Fabara as a white male, 6'2", with low cut black hair, 200lbs., muscular/built, 29 or 30 years old, wearing a green army fatigue shirt and blue shorts. Another officer was a white male, 5'9" (short), 200lbs., muscular, 30 to 32 years old, with a mustache and wearing a white t-shirt. The third officer was a white male, 5'9" (around the same height as the mustached officer), 20 to 22 years old, 195lbs. with a slim build, wearing a baseball cap.

Sergeant Fabara, who was the first officer to get out, was in the front passenger's seat. The mustached officer was in the driver's seat and the twenty-year-old, slim officer was in the back seat.

Sergeant Fabara twice tried to grab § 87(2)(b)'s arm, and each time § 87(2)(b) pulled his arm away. § 87(2)(b) asked Sergeant Fabara why he was doing this, and Sergeant Fabara replied, "Just turn around and get against the fence." Sergeant Fabara then grabbed § 87(2)(b)'s shirt in the shoulder area with one hand, grabbed around his waist with his other hand, turned him around and forced him towards the fence.

§ 87(2)(b)'s friends all said, "Just let him check you." Sergeant Fabara patted § 87(2)(b)'s pockets, the inside of his legs and underneath his arms, but never went under his clothing. § 87(2)(b) was facing the building, and Sergeant Fabara was behind him. The other two officers stood behind Sergeant Fabara.

Sergeant Fabara asked § 87(2)(b) what he was doing sitting in front of the building, and § 87(2)(b) replied that he was hanging out with his friends. Sergeant Fabara asked him whether he lived there, and he replied that he was visiting. The officers also asked how old he was. § 87(2)(b) became angry and tried to walk away, prompting the slim twenty-year-old officer and the mustached officer to stand in his way and block him. At one point, § 87(2)(b) who was angry, asked repeatedly in a raised voice why Sergeant Fabara had searched him, and Sergeant Fabara stated, "Don't worry about it, you wanna go to jail in front of your friends?" § 87(2)(b) stated to the CCRB that he was not yelling, but just speaking in a raised voice. The officers asked him a few more questions, and then he walked into the building and the officers got into their car and left.

§ 87(2)(b) walked upstairs to get his mother, who came downstairs with his aunt and father and brother in order to speak with the officers. As they stood outside, § 87(2)(b) noticed the same car and pointed it out to his mother.

As they watched, the officers got out of their car about fifty feet from the building and stopped two young men. One rode a bicycle, and was a black male roughly 6'5", 160 to 170 pounds with a thin build, wearing a mustache with sideburns and a baseball cap. The other young man was 5'9", 180 lbs. with a medium build, and also wore a mustache with sideburns and a baseball cap. Sergeant Fabara patted their legs and pockets and made them lift up their shirts. After the stop, the two men left.

§ 87(2)(b) walked to the car and spoke with the officers. § 87(2)(b) did not remember which officer she spoke with and did not hear what the officer and his mother said to each other. § 87(2)(b)'s stepfather, § 87(2)(b) was there, but stood with § 87(2)(b) about twenty feet from § 87(2)(b) and the officers and questioned § 87(2)(b) about what happened. § 87(2)(b)'s father never spoke to the officers. At some point, § 87(2)(b) noticed that Sergeant Fabara's shield was upside down. The officers drove off, and § 87(2)(b) did not see them again.

§ 87(2)(b) never saw an officer manipulate his badge or put it inside his shirt.

§ 87(2)(b) husband of § 87(2)(b) provided a phone statement to the CCRB on 10/5/2005 (enc. 8A-B). § 87(2)(b) is a 6'1", 225 pound § 87(2)(b) -year-old black male. § 87(2)(g)

After § 87(2)(b)'s family noticed the officers' car, the officers stopped a group of three or four kids. He could not describe the kids and could not describe any details of the stop, except to say that they patted the kids down and asked them questions.

§ 87(2)(b) and § 87(2)(b) approached and spoke with Sergeant Fabara. Sergeant Fabara told them that § 87(2)(b) had been "just standing there," but that his red shirt made him believe that § 87(2)(b) was a gang member, and it was "Blood and Crip Night." Sergeant Fabara had told § 87(2)(b) that he had asked § 87(2)(b) if he had a gun, and § 87(2)(b) had replied, "No." Sergeant Fabara also stated that § 87(2)(b) had attempted to turn away from the officers.

§ 87(2)(b) left § 87(2)(b) downstairs with the officers, and did not hear the end of the conversation. When asked directly, he initially stated that § 87(2)(b) asked the officers for their names, then stated that he did not hear her do so, then stated that he was not sure.

Throughout the encounter, the officers' shields were showing. Sergeant Fabara's shield was upside down. § 87(2)(b) called Internal Affairs to complain after the officers left.

§ 87(2)(b) provided a phone statement to the CCRB on 10/5/2005 (enc. 10A-C). § 87(2)(b) is a 5'8", 140 pound § 87(2)(b) -year-old black male. § 87(2)(g)

§ 87(2)(b) described Sergeant Fabara, who sat in the driver's seat of their car, as a Hispanic male, 5'6", 150 lbs. to 170 lbs., in his mid 30s, with low cut blonde hair and a Puerto Rican accent. § 87(2)(b) did not know Sergeant Fabara by name, but identified him based upon his badge number. § 87(2)(b) described Officer Konoski as a Hispanic male, 230lbs. with a muscular build, 5'1" (shorter than the other officers), in his late 20s with black hair. He did not know Officer Konoski by name, and Officer Konoski was identified based upon subsequent investigation. He described Officer Florio as a light-skinned Hispanic male, 190 to 200lbs. with a heavyset build, 6'7", 35 years old, with low cut yellow hair and green eyes. He did not know Officer Florio by name, and Officer Florio was identified based upon subsequent investigation.

§ 87(2)(b) claimed that officers immediately searched both he and § 87(2)(b). Officer Konoski asked him to spread his legs, and then patted his pockets. Officer Konoski felt a pack of seeds in the pockets, and asked what they were, prompting § 87(2)(b) to reach into his own pocket and drop the pack on the ground for him to see. Officer Konoski touched § 87(2)(b) in "inappropriate places I didn't like"; more specifically, he patted in between his legs and on his genitals and buttocks. Officer Konoski also patted § 87(2)(b)'s back, shook his pants leg and patted his socks.

§ 87(2)(b) observed Sergeant Fabara touch § 87(2)(b) in the same places. Sergeant Fabara then pushed § 87(2)(b) against a gate, prompting § 87(2)(b) to begin cursing at the officers. The officers all replied that he had to stop, or they would beat him up, and § 87(2)(b) replied, "Y'all aren't gonna fucking do nothing. If y'all touch me, you'll be in trouble." Sergeant Fabara and Officer Konoski began pushing § 87(2)(b) in his chest.

A woman, whose name § 87(2)(b) did not know, then stepped out of § 87(2)(b) and saw what was happening, prompting the officers to get in their car and drive away. As the officers drove away, they all made rude finger gestures at the civilians, and Officer Konoski licked his tongue at § 87(2)(b) in an apparent insult. § 87(2)(b)'s younger brother, § 87(2)(b) came downstairs, and § 87(2)(b) and § 87(2)(b) went back upstairs in order to get § 87(2)(b) and § 87(2)(b).

As § 87(2)(b) came back outside, he saw that the same officers had stopped three young men whom he did not know. § 87(2)(b) described one of the men as "very tall" and then stated that he stood at between 5'6" and 5'8", in his twenties, with slim build, with his hair in cornrows and a blue hoody. Sergeant Fabara patted this man down. A second man was 5'0", wore a hoody and a "low" haircut and was also in his twenties. Officer Konoski patted this second man down. A third man was 5'8", with low-cut hair, in his mid 20s, wearing a black hoody, blue jeans and white sneakers. § 87(2)(b) initially stated that Officer Florio patted this man down, but later stated that Officer Konoski did so.

The officers then approached § 87(2)(b)'s group, and the Sergeant Fabara told them that the kids had to be inside by 11:30 PM. § 87(2)(b) stood next to his mother as she spoke with Sergeant

Fabara, but stated that he did not know whether she made any phone calls during the conversation. The conversation lasted for about ten to fifteen minutes.

§ 87(2)(b) read Sergeant Fabara's badge number, which he remembered as 1729. (It should be noted that Sergeant Fabara's badge number is 1279.)

§ 87(2)(b) provided a phone statement to the CCRB on 2/24/2006 (enc. 11).

She stated that, after § 87(2)(b) came upstairs and stated that he had been assaulted by the police, everyone ran downstairs to find out what was going on, but the officers had left. § 87(2)(b) made a phone call to file a complaint at this point.

When the officers returned, § 87(2)(b) told § 87(2)(b) to stand aside with the children at the building entrance, while § 87(2)(b) and § 87(2)(b) spoke with two white officers, whom she could not describe, by their car, in front of the building about ten feet away. § 87(2)(b) did not see the officers stop and search anybody before § 87(2)(b) talked to them. She was not able to hear the conversation.

Once the officers had apparently finished speaking with § 87(2)(b) and § 87(2)(b) the officers walked to the building entrance and then apologized to the boys. The officers politely stated that they were sorry that they had searched them, but that it was Blood Night and they had acted according to procedure in order to make sure the boys didn't have "anything on them" relating to the Bloods. An officer stated that, because § 87(2)(b) had been wearing red, he thought that § 87(2)(b) could have been a Bloods member. The officers were wearing badges, but § 87(2)(b) did not read them. While the officers tried to explain themselves, § 87(2)(b) kept on talking and trying to explain what happened, and § 87(2)(b) told § 87(2)(b) to shut up. § 87(2)(b) provided her address and contact information to the officers at their request.

The next morning, the § 87(2)(b) returned to Virginia; § 87(2)(b) did not speak with them about the incident again.

Attempts to Contact Additional Witnesses

The undersigned repeatedly contacted § 87(2)(b) in order to ask her to provide the names and contact information for § 87(2)(b)'s friends, and of the woman she knew as "§ 87(2)(b) and § 87(2)(b)". § 87(2)(b) agreed to do so. However, at the date of this report, § 87(2)(b) has not provided this information.

§ 87(2)(g)

Police Officer Statements

Sergeant Carlos Fabara of the 101st Precinct made a memobook entry on 9/23/2005 noting that at 8:15 PM he stopped § 87(2)(b) at § 87(2)(b) and noting the SPRINT number (enc. 12B). Sergeant Fabara was interviewed at the CCRB on 3/14/2006 (enc.13A-C).

Sergeant Fabara is a 5'10", 185 pound, black-haired, brown-eyed § 87(2)(b)-year-old Hispanic male with features that could be described as "Asian." He has been with the NYPD for seven years.

On 9/23/2005, Sergeant Fabara worked in plainclothes as the supervisor of the 101st Precinct Anti-Crime Unit with Officer John Florio and Officer Eric Konoski in vehicle 532, a black Chevy Impala, and worked a tour of 5:30 PM to 2:05 AM. He did not recall what he was wearing or where he sat in the vehicle.

At approximately 8:50 PM, Sergeant Fabara's team was driving through the walkways of the Redfern Houses development on patrol. The Redfern Houses have a very high incidence of drug and gang activity. Sergeant Fabara denied being aware of any gang conditions particular to that night or time of year, and stated that he was unaware of "Blood Night." Members of the Bloods normally wear red.

As they drove past § 87(2)(b) they noticed two young black males, one of whom he identified as § 87(2)(b) and the other identified by investigation as § 87(2)(b). Sergeant Fabara recalled § 87(2)(b)'s name based upon receiving it at the scene, and upon reading the CCRB allegations sheet prior to his interview. Sergeant Fabara could not recall what the two young men were wearing. The two young men were standing together within a larger group of approximately ten kids.

When § 87(2)(b) and § 87(2)(b) noticed the officers, they appeared to become alarmed and extremely nervous, and began walking away from the car. § 87(2)(b) began gently tapping and

tugging his waist, and the two young men both began turning their bodies away from the officers. Based upon these factors, in conjunction with his experience, Sergeant Fabara suspected § 87(2)(b) of concealing a gun. Based upon the strong possibility that § 87(2)(b) had passed a gun to § 87(2)(b) the officers decided to stop both young men.

Sergeant Fabara initially stated that a member of his team (he could not recall who) ordered both young men to stop. When questioned later as to why no UF250 was filled out for § 87(2)(b) Sergeant Fabara stated that the officer issuing the orders only told § 87(2)(b) to stop, but that § 87(2)(b) was standing near him and stopped as well.

§ 87(2)(b) stopped, but § 87(2)(b) became verbally combative, started to walk away, and repeatedly put his hands in his pockets as the officers ordered him not to. One of the officers (Sergeant Fabara again could not remember who) grabbed § 87(2)(b) and he continued trying to hide his hands from the officers, prompting them (Sergeant Fabara could not remember whom or how many) to hold his arms and hold him against a nearby gate. The team frisked § 87(2)(b) and did not find a weapon; Sergeant Fabara could not recall who performed the frisk. § 87(2)(b) screamed loudly the whole time, and was behaving in a disorderly fashion.

The entire stop lasted less than five minutes. One of the other officers filled out a UF250 documenting the stop of § 87(2)(b) but Sergeant Fabara could not remember when. The officers resumed patrol after the stop. Sergeant Fabara could not recall what they did at this time, and did not recall stopping anybody else.

As they drove past § 87(2)(b) again, a woman approached their car and identified herself as § 87(2)(b)'s mother, § 87(2)(b). § 87(2)(b) was initially very upset with Sergeant Fabara, but he explained the reasons for the stop to her, and she then went over to § 87(2)(b) yelled at him, and forced him to apologize to the officers, which he did reluctantly. Sergeant Fabara did not recall mentioning anything to § 87(2)(b) about what her sons were wearing, but that he might have done so if they had been wearing gang colors. He could not recall whether any civilian asked for his name and shield number, but stated that he would have provided them if asked, since he had already documented the stop anyway through a UF250. Sergeant Fabara stated that officers generally collect as much personal information as possible from the people that they deal with, as a general part of good policing, and that he may have asked § 87(2)(b) for personal information to that end.

Sergeant Fabara stated that a UF250 must be filled out when a suspect is stopped based upon reasonable suspicion. He stated that the officers did not fill out a UF250 for § 87(2)(b) because they initially only intended to stop § 87(2)(b) (for whom they had reasonable suspicion) and only stopped § 87(2)(b) once he became involved in the initial stop of § 87(2)(b).

Sergeant Fabara could not explain why there was no UF250 for § 87(2)(b) in the precinct UF250 log, but noted that his unit initially stores the forms in their own office, sometimes creating a lag until they reach the precinct log.

Officer John Florio of the 101st Precinct filled out a memobook entry noting that at 8:15 PM on 9/23/2005 he stopped § 87(2)(b) on suspicion of criminal possession of a weapon. The entry also records § 87(2)(b)'s date of birth (enc. 14B). Officer Florio interviewed at the CCRB on 3/14/2006 (enc. 15A-B). Officer Florio is a 5'10", 175 pound, brown-haired, blue-eyed white male. He has been with the NYPD for four years. § 87(2)(g)

When asked about the term, "Blood Night," Officer Florio stated that, in general, gangs initiate new members during the weekends at the start of the school year, and during those times, officers will be on the lookout for gang initiation activities, such as shootings and weapons possessions.

When § 87(2)(b) observed the officers, he started behaving nervously: he turned his back to them, began walking to the door and tried to hide inside the group of the rest. Officer Florio did not recall suspecting any other civilian on the scene of a crime, and did not recall his group stopping and frisking any other civilian.

Officer Florio stated that § 87(2)(b) could have been arrested for disorderly conduct based upon the way he was behaving, but that he did not recall any officer explaining to him that he could be arrested.

Officer Florio stated that he remained in the car while Sergeant Fabara spoke with § 87(2)(b) and did not hear what they said to each other. Sergeant Fabara eventually waved Officer Florio out of the car, where § 87(2)(b) apologized to them.

Officer Eric Konoski of the 101st Precinct was interviewed at the CCRB on 3/30/2006 (enc. 17A-B). Although required to bring his memobook to his CCRB interview, Officer Konoski did not do so, and failed to fax or otherwise provide the memobook to the CCRB afterwards, although specifically instructed by the undersigned to do so.

Officer Konoski is a 5'6", 180 pound, brown-haired, blue-eyed white male. He has been with the NYPD for four years. § 87(2)(g)

Officer Konoski was unaware of any particular gang-related conditions for that time of year at the Redfern Houses. He stated that gang initiations happen all year, not at any particular time of year.

Officer Konoski's team first noticed a teenager identified by investigation as § 87(2)(b) who looked different from the other kids in the group due to a "deer in the headlights" demeanor. Officer Konoski stated that, due to the elapsed time since the incident, he could no longer recall the specific factors that caused him to believe that § 87(2)(b) was nervous.

The officers decided to approach § 87(2)(b) and see how he responded to their questions. Officer Konoski primarily spoke with § 87(2)(b) asking him why he was standing in front of the building and for his name and pedigree information. § 87(2)(b) was nervous but cooperative. Officer Konoski stated that he asked for § 87(2)(b)'s pedigree information because as a general practice he likes to know who he is dealing with; sometimes he will recognize someone's name. He did not recognize § 87(2)(b)'s name when he received it. At this point, § 87(2)(b) was free to leave.

After roughly a minute, a man on the scene identified by investigation as § 87(2)(b) became irate, yelling curses at the officers and saying that he wanted to fight them. § 87(2)(b) who was thin and appeared to be roughly sixteen years old, was wearing a long red shirt, which was a potential sign that he belonged to a gang. Officer Konoski frisked § 87(2)(b) for weapons in his waist area, based upon his nervous behavior and the fact that § 87(2)(b)'s behavior appeared to be an attempt to distract the officers from § 87(2)(b) resembling tactics Officer Konoski was trained to recognize in an NYPD gun recognition course. At this point, § 87(2)(b) was not free to go.

Officer Konoski did not recall whether § 87(2)(b) was frisked; Officer Konoski did not frisk him. He did not remember an officer holding § 87(2)(b) against a fence.

Officer Konoski thought that he filled out a UF250 for § 87(2)(b) but stipulated that it was seven months ago and he was not sure.

Communications Records

A SPRINT report (enc. 18) and NYPD Communications (enc. 20F) recording showed that a member of the 101st Precinct Anti-Crime unit reported at 8:53 PM that they had stopped one male, § 87(2)(b) in front of § 87(2)(b) and, a few minutes later, updated the disposition to 10-93Q (Other Report Prepared.)

Requests for a SPRINT report documenting § 87(2)(b)'s 911 call were returned as negative.

Police Documents

A request for a UF250 documenting the stops of § 87(2)(b) and § 87(2)(b) was negative, and the UF250 index for the 101st Precinct (enc. 19A-B) did not contain any listing for these UF250s. A notation on the records request receipt indicates that precinct personnel filled the request on 1/19/2006. (enc. 22H)

Internal Affairs never forwarded any report to the CCRB documenting § 87(2)(b)'s 911 call.

Civil Proceeding

A call to the New York City Comptroller's office on 7/19/2006 showed that no one has filed a lawsuit in connection with this incident (enc. 20H).

Records of Criminal Convictions

A BADS search for defendants with the last name § 87(2)(b) revealed no arrests for § 87(2)(b) § 87(2)(b) or § 87(2)(b) § 87(2)(b) [§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

§ 87(2)(b) has filed three other complaints with the CCRB (enc. 5). § 87(2)(b)

Officer CCRB History

During his seven-year tenure with the NYPD, Sergeant Fabara has been involved in three CCRB cases resulting in a recommendation of discipline (enc. 4A-C). In CCRB # 200508693, four allegations were substantiated against him: “Abuse – Premises entered and/or searched,” “Abuse – Refusal to provide name/shield number,” “Abuse – Other,” and “Abuse – Frisk.” In CCRB # 200512992, two allegations were substantiated against him: “Abuse – Question and/or stopped,” and “Abuse – Frisk.” § 87(4-b) § 87(2)(g) The NYPD dispositions of these three cases were not available at the date of this report.

During his four-year tenure with the NYPD, Officer Florio has been the subject of substantiated allegations in connection with CCRB case # 200404637 (enc. 4D). The substantiated allegations were “Abuse – Question and/or stopped,” and “Abuse – Vehicle Searched.” The NYPD disposition of this case was not available at the date of this report.

During his four-year tenure with the NYPD, Officer Konoski has been the subject of substantiated allegations in connection with CCRB case # 200512992 (enc. 4E), in which Sergeant Fabara was also a subject, as noted above. The substantiated allegations were “Abuse – Question and/or stopped” and “Abuse – Frisk.” The NYPD disposition of this case was not available at the date of this report.

Conclusions and Recommendations

Officer Identification

Sergeant Fabara, Officer Konoski and Officer Florio were identified as participants in this incident based upon their unit’s call of 10-93Q (Other Report prepared) at the time and location of incident, and based upon their own acknowledged participation in the incident.

§ 87(2)(g)

The officers described the decision to stop § 87(2)(b) and § 87(2)(b) as a joint one, based upon the independent observations of each partner. § 87(2)(g)

§ 87(2)(g) § 87(2)(b) identified Sergeant Fabara based upon his badge number, and claimed that it was Sergeant Fabara who frisked § 87(2)(b) Furthermore, § 87(2)(b) claimed that Sergeant Fabara sat in the driver’s seat of the officers’ car, and § 87(2)(b) also claimed that the officer who frisked him sat in the driver’s seat. A

§ 87(2)(g)

Officer Konoski clearly differentiated between § 87(2)(b) and § 87(2)(b) according to their height and based upon his description of the taller one of the brothers § 87(2)(b) behaving belligerently, which was corroborated by his partners and by § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Her description of an officer as an either Hispanic or Asian male 6'0", with dark hair and brown eyes, in his late 30s, weighing 170 to 190lbs with a muscular build, clearly refers to Sergeant Fabara, who is a 5'10", 185 pound, black-haired, § 87(2)(b)-year-old Hispanic male with features that could be described as "Asian." § 87(2)(g)

§ 87(2)(g)

Undisputed Facts

On 9/23/2005 at approximately 8:50 PM, § 87(2)(b) and § 87(2)(b) were hanging out in front of § 87(2)(b) in Queens when they were stopped and frisked by members of the 101st Precinct Anti-Crime team, which on that day was composed of Sergeant Fabara, Officer Konoski and Officer Florio. (Although not all of the officers recalled that § 87(2)(b) was specifically stopped, or recalled that § 87(2)(b) was frisked, no officer specifically disputed that this occurred.) § 87(2)(b) was wearing a red shirt. After frisking the young men, the officers returned to their car and resumed patrol. § 87(2)(b) went upstairs and he and his mother § 87(2)(b) his stepfather § 87(2)(b) and his family friend § 87(2)(b) all came outside and stood in front of the building. When the officers' car passed the building again, § 87(2)(b) approached the car and spoke with Sergeant Fabara.

Disputed Facts

§ 87(2)(g)

Sergeant Fabara and Officer Konoski denied any knowledge of "Blood Night" and denied awareness of any particular gang conditions in the Redfern Houses on the night of the incident. When asked about the meaning of the phrase, "Blood Night," Officer Florio stated that gangs generally conduct initiations on the weekends at the beginning of the school year.

Sergeant Fabara and Officer Florio claimed that they decided to stop § 87(2)(b) after noticing him tugging his waistband, while Officer Konoski claimed that the officers initially decided to approach and question § 87(2)(b) based upon nervous behavior on his part, and only stopped § 87(2)(b) when he became belligerent. Officer Florio denied any memory of the officers stopping § 87(2)(b)

§ 87(2)(b) claimed that § 87(2)(b) yelled and cursed at the officers, while § 87(2)(b) denied these claims. § 87(2)(b) also claimed that, as the officers drove away, they stuck their middle fingers up at the group of kids, and that an unidentified officer licked his tongue at § 87(2)(b). The officers denied these allegations.

§ 87(2)(b) and § 87(2)(b) all claimed that the officers stopped a group of men before § 87(2)(b) and § 87(2)(b) began discussing the incident with them. Each person provided different physical descriptions of the men that the officers allegedly stopped

§ 87(2)(g)

§ 87(2)(g)

Allegation A, Abuse of Authority: Sergeant Carlos Fabara supervised the forcible stop and questioning of § 87(2)(b) and § 87(2)(b)

Allegation B, Abuse of Authority: Sergeant Carlos Fabara frisked § 87(2)(b)

Allegation C, Abuse of Authority: Officer Eric Konoski frisked § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) it is clear from the statements that the officers stopped and frisked both § 87(2)(b) and § 87(2)(b). It is also clear that, after § 87(2)(b) attempted to avoid the officers, they forcibly detained him while frisking him. § 87(2)(g)

§ 87(2)(b) the guidelines outlined by the New York Court of Appeals in *People v. Debour*. As described by Barry Kamins in his *New York Search and Seizure*, such a stop occurs “whenever an individual is actually or constructively detained by virtue of a significant interruption of his liberty of movement.” A forcible stop includes situations in which an individual is physically subdued, § 87(2)(g) as well as situations in which an individual is ordered to comply with police directives, § 87(2)(g).

Kamins note that, “Before a person may be stopped in a public place, the officer must have a reasonable suspicion that the person is committing, has committed, or is about to commit a crime.” (enc. 3A) § 87(2)(g)

§ 87(2)(g)

Officer Konoski claimed that the officers initially approached § 87(2)(b) based upon his nervous behavior, with the intention of seeing how he responded to their questions, when § 87(2)(b) suddenly began screaming at them, causing them to suspect him of attempting to divert their attention from § 87(2)(b) § 87(2)(g)

Officer Florio and Sergeant Fabara § 87(2)(g)

§ 87(2)(b) claimed that they observed § 87(2)(b) behave nervously and attempt to hide himself from the officers, while tugging at his waist in a manner suggesting that he was adjusting a heavy object. Sergeant Fabara added that § 87(2)(b) was moving next to § 87(2)(b) in a manner suggesting he may have passed a gun to § 87(2)(b). Although Officer Florio did not recall this detail, he did state that § 87(2)(b) joined a “huddle” of his friends. § 87(2)(g)

Kamins notes, “a nervous or startled reaction by an individual who turns and walks away from the police will not constitute reasonable suspicion.” (enc. 3E-F) § 87(2)(g)

However, furtive behavior, in combination with other factors, can create reasonable suspicion (enc. 3C). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Kamins notes that Section 140.50(3) of the Criminal Procedure Law allows a police officer to frisk a suspect for weapons when he “reasonably suspects that he is in danger of physical injury.” (enc. 3E)

§ 87(2)(g)

Allegation D, Abuse of Authority: An officer threatened to arrest § 87(2)(b)

§ 87(2)(b) claimed that in a loud voice, but without yelling, he repeatedly asked the officers why they had searched him, prompting Sergeant Fabara to say, “Don’t worry about it, you wanna go to jail in front of your friends?” § 87(2)(g)

New York State Penal Law Section 240.20 (enc. 2) provides that “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof....in a public place, he uses abusive or obscene language” (subsection 3.) § 87(2)(g)

Allegation E, Discourtesy: Sergeant Carlos Fabara gestured obscenely toward § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

Allegation F, Discourtesy: Officer Eric Konoski gestured obscenely toward § 87(2)(b)

and § 87(2)(b)

Allegation G, Discourtesy: Officer John Florio gestured obscenely toward § 87(2)(b)

and § 87(2)(b)

Patrol Guide Procedure 203-09 (enc. 1A) instructs New York City police officers to “Be courteous and respectful.” § 87(2)(b) claimed that, as they drove away, the officers made rude finger gestures at the group of boys standing in front of § 87(2)(b) § 87(2)(g)

Allegation H, Abuse of Authority: Sergeant Carlos Fabara refused to provide his name to

§ 87(2)(b)

Patrol Guide Procedure 203-09 (enc. 1A) instructs New York City police officers to “Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so.” § 87(2)(b) claimed that, at the prompting of an IAB officer on the phone, she asked for Sergeant Fabara’s name, and he replied that he would call the IAB officer back, but would not provide § 87(2)(b) with his name.

§ 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: